

investigation. Indeed, the Report elsewhere acknowledges that “Babbitt denied having thought - at the time he wrote to McCain - that if he said he mentioned Ickes's name to Eckstein, further investigation was likely.” (Report at 409.)

Example: The Report finds “probative” the Secretary's telephoned apology to Senator McCain following a press account contrasting Babbitt's letters to McCain and Thompson. (*Id.* at 478-79.) It recites McCain's recollection that Babbitt made an “abject apology” (“John, I misled you and owe you an apology”). (*Id.* at 479.) The Report acknowledges that “this is not an admission by Babbitt that he intentionally misled McCain,” but goes on to say that in neither McCain's nor Babbitt's account of the conversation does Babbitt tell McCain that he did not intend to mislead him: “At a minimum, the apology to McCain acknowledges that the substance of the letter was misleading, and that McCain could reasonably feel that he had been deceived. In this context, Babbitt's failure to assert that any deception had been unintentional *is telling*.” (*Id.* at 479 (emphasis added).)

It would have been more complete, and much more fair, if the Report had noted that each time Secretary Babbitt recounted his version of the apology before the grand jury, he qualified the apology by beginning it with “*if* I misled you.” (Babbitt Grand Jury Test. at 249:4-17) (emphasis added). Indeed just prior to stating that he had “no reason to challenge” Senator McCain's recollection that he had said “John, I misled you and owe you an apology,” Secretary Babbitt explained:

Q. And so at this point, speaking with John McCain, you apologized for misleading him through your letter on August 30, 1996. Did you explain to him what had actually happened?

A. I don't think so. I think I had probably - I don't know whether I mentioned to him that I had just talked with Bowles or not. I don't know. I think I, you know, probably